

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

STEVEN RANAE GLEEN CANDLER,  
Plaintiff,  
v.  
JOHN & JANE DOES, et al.,  
Defendants.

No. 1:23-cv-00459-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S SIXTH  
MOTION FOR APPOINTMENT OF  
COUNSEL, WITHOUT PREJUDICE, AND  
EXTENDING DEADLINE TO SUBSTITUTE  
NAMED DEFENDANT IN PLACE OF DOE  
DEFENDANT

(ECF Nos. 38, 47)

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's sixth motion for appointment of counsel, filed December 8, 2023.

As Plaintiff is aware, he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

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1 Without a reasonable method of securing and compensating counsel, the court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success  
4 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
5 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances.  
7 Plaintiff continues to simply argue the merits of his case in seeking appointment of counsel. Even  
8 if it assumed that Plaintiff is not well versed in the law and that he has made serious allegations  
9 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with  
10 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to  
11 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the  
12 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most  
13 actions require development of further facts during litigation and a pro se litigant will seldom be  
14 in a position to investigate easily the facts necessary to support the case.”) The test is whether  
15 exception circumstances exist and here, they do not. Indeed, this action is proceeding on  
16 Plaintiff’s excessive claim against an unidentified correctional officer at Wasco State Prison and  
17 provides no basis whatsoever as to why counsel is necessary. (ECF No. 37.) Based on a review  
18 of the record, the Court finds that the issues are not complex and Plaintiff is able to litigate this  
19 action pro se. Accordingly, Plaintiff’s sixth motion for the appointment of counsel is denied,  
20 without prejudice.

21 To the extent Plaintiff continues to seek information and/or subpoenas for an attack that  
22 allegedly occurred at the Visalia courthouse, Plaintiff is again advised that the Court found that  
23 Plaintiff stated a cognizable excessive force claim based on the allegations of the use of excessive  
24 force against an unidentified correctional officer at Wasco State Prison. (ECF No. 12.) Plaintiff  
25 is not and cannot proceed on a claim for the use of force at the Visalia courthouse in this action.  
26 Thus, pursuant to the Court’s October 17, 2023, order, Plaintiff should complete and return form  
27 AO88B, and file a motion to substitute a named Defendant in place of the Doe Defendant at  
28 Wasco State Prison (ECF No. 38.) As stated in the Court’s October 17, 2023, Plaintiff is allowed

1 to subpoena documents for the purpose of identifying the Doe Defendant. (ECF No. 38.)

2 However, the Court cannot substitute or direct service on a Defendant unless and until he/she is  
3 identified by Plaintiff. Accordingly, it is HEREBY ORDERED that:

- 4 1. Plaintiff's sixth motion for appointment of counsel is denied, without prejudice;
- 5 2. Plaintiff has 30 days from the date of service of this order to complete and return  
6 form AO88B; and
- 7 3. Plaintiff has 90 days from the date of service of this order to file a motion to  
8 substitute named Defendant in place of the Doe Defendant; and
- 9 4. Failure to comply with this order may result in dismissal of the action.

10 IT IS SO ORDERED.

11 Dated: **December 11, 2023**

  
UNITED STATES MAGISTRATE JUDGE